

In the High Court of Judicature at Madras

Dated : 27.11.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.1429 of 2007

Commissioner of Income Tax
Chennai.

... Appellant/Respondent

Vs.

M/s.Bilahari Enterprises Pvt.Ltd.,
(formerly known as M/s.Bilahari
Investments P.Ltd.)
45, Poes Road, Teynampet
Chennai - 600 018.

.. Respondent/Appellant

TAX CASE (APPEAL) under Section 260-A of the Income Tax Act against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 28.2.2007 made in I.T.A.No.209/Mds/2005 and against the order of the Commissioner of Income Tax (Appeals)VII Madras ITA No.30/04-05, dated 29.10.2004, and against the Assessment order for in year 2001-2002 dated 18.02.2004 in PA/GIR.No.AABCB 6003G/BX4-029 of the Asst. Commissioner of Income Tax, Company Circle I (2), Chennai.

For Appellant : Mr.J.Narayanasamy
Junior Standing Counsel
for Income Tax

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN, J

This appeal has been filed against the order of the Income Tax Appellate Tribunal in I.T.A.No.209/Mds/2005 dated 28.2.2005. The relevant assessment year is 2001-02.

2. The substantial question of law formulated for entertainment of the appeal is as follows:

"Whether on the facts and circumstances of the

case, the Tribunal was right in holding that the discount loss on chits is to be allowed in its entirety in the year it occurs rather than spread it over the period of the chit?"

3. The assessee is in the business of subscribing to chit funds. For the assessment year 2001-02, the assessee inter alia claimed that the loss arising on account of discount granted should be allowed at the time of accrual and not to be spread over the period of discount. The Assessing Officer followed the order of the Income Tax Appellate Tribunal in the assessee's own case and revised the working.

4. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who dismissed the appeal. The assessee filed a Second Appeal to the Income Tax Appellate Tribunal, which followed the order of this Court reported in 288 ITR 39 (M/S.BILAHARI INVESTMENTS P.LTD. VS. COMMISSIONER OF INCOME TAX), which is the assessee's own case in respect of Assessment years 1991-92, 1992-93 and 1993-94 and decided that the discount loss should only be allowed in the year of accrual. The Revenue filed the present appeal against that order.

5. Learned counsel appearing for the Revenue fairly submits that the issue is covered as against the Revenue in respect of the assessee's own case reported in 288 ITR 39 (M/S.BILAHARI INVESTMENTS P.LTD. VS. COMMISSIONER OF INCOME TAX), wherein, this Court, after taking into consideration Sections 5 and 145 of the Income Tax Act, 1961, held that the income received or deemed to be received or accruing or arising during the previous year shall form part of the total income of the assessee and such income shall be computed in accordance with the accounting system which the assessee regularly followed. Therefore, when the assessee followed the mercantile system of accounting, as required under the Income Tax Act, and entries were posted in the books of account on the date of transaction, that is, on the date on which rights had accrued or liabilities were incurred irrespective of the date of payment, the income derived during a particular previous year by way of chit dividend had to be reckoned and assessed as income of that year. The dividend income had to be taxed on the basis of its accrual in the year of receipt.

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6. In the light of the reasoning given in the assessee's own case reported in 288 ITR 39 (M/S.BILAHARI INVESTMENTS P.LTD. VS. COMMISSIONER OF INCOME TAX), the Tax Case Appeal is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

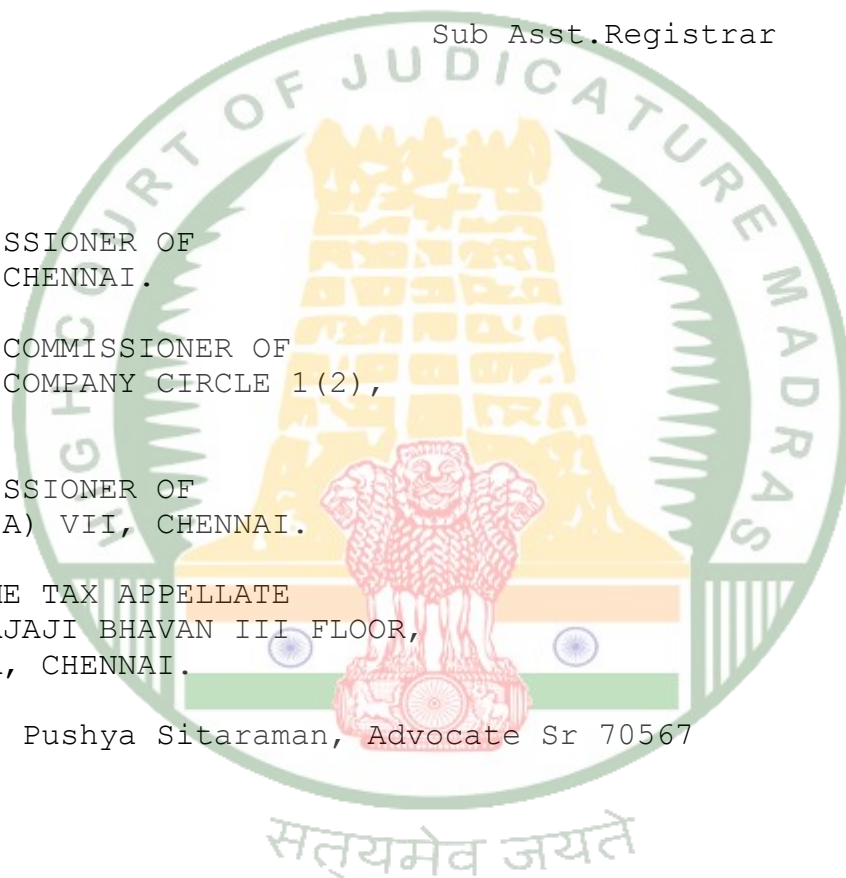
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To:

1. THE COMMISSIONER OF INCOME TAX, CHENNAI.
2. THE ASST.COMMISSIONER OF INCOME TAX, COMPANY CIRCLE 1(2), CHENNAI.
3. THE COMMISSIONER OF INCOME TAX (A) VII, CHENNAI.
4. THE INCOME TAX APPELLATE TRIBUNAL, RAJAJI BHAVAN III FLOOR, BESANT NAGAR, CHENNAI.

+1cc to M/s. Pushya Sitaraman, Advocate Sr 70567

VRK (CO)
km/7.12.



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No.1429 of 2007